

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHARLES L. MOTLEY
Claimant

VS.

CHAMPION INDUSTRIES, INC.
Respondent

AND

CONTINENTAL WESTERN GROUP
Insurance Carrier

)
)
)
)
)
)
)
)
)
)

Docket No. 1,015,118

ORDER

Respondent and its insurance carrier (respondent) appealed the September 14, 2004 preliminary hearing Order entered by Special Administrative Law Judge Vincent L. Bogart.

ISSUES

Claimant alleges he sustained accidental injury while working for respondent. In the September 14, 2004 Order, Judge Bogart ordered respondent to provide claimant with the names of three physicians from which claimant could select one for examination and treatment of his alleged work injury.

Respondent contends Judge Bogart erred. Respondent argues claimant (1) did not sustain accidental injury arising out of and in the course of his employment, (2) did not provide respondent with timely notice of his accidental injury, and (3) did not provide respondent with timely written claim. Accordingly, respondent requests the Board to reverse the September 14, 2004 preliminary hearing Order and deny workers compensation benefits.

The issues on this appeal are whether claimant sustained accidental injury arising out of and in the course of his employment with respondent, whether claimant provided respondent with timely notice of his accidental injury, and whether claimant provided respondent with timely written claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes:

Claimant alleges he injured his back in early January 2004 while working for respondent. Claimant testified he injured his back at work while moving a barrel filled with material. Claimant's testimony is uncontradicted that he reported his accident to respondent's lead shop foreman, identified as Mike. Moreover, claimant also testified that he told respondent's owner, Keith Martin, about his back injury. According to claimant, that conversation occurred on January 12, 2004.

Via Christi Regional Medical Center records from January 3, 2004, indicate claimant complained to emergency room personnel at that time of back pain that had begun the day before at work. Emergency room records from January 12, 2004, indicate claimant complained of continued back pain and that claimant had been seen in the emergency room the week before for back pain that began while lifting at work.

At this juncture, the Board agrees with Judge Bogart's implied findings that claimant sustained accidental injury arising out of and in the course of his employment with respondent in early January 2004 and that claimant provided respondent with timely notice of his accidental injury.

Respondent requests the Board to review whether claimant provided timely written claim. But that issue was not presented to the Judge and, consequently, it is not before the Board at this time.¹

The September 14, 2004 preliminary hearing Order should be affirmed.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.²

WHEREFORE, the Board affirms the September 14, 2004 preliminary hearing Order entered by Judge Bogart.

IT IS SO ORDERED.

¹ See K.S.A. 44-555c.

² K.S.A. 44-534a(a)(2).

Dated this ____ day of November 2004.

BOARD MEMBER

c: Randy S. Stalcup, Attorney for Claimant
James B. Biggs, Attorney for Respondent and its Insurance Carrier
Vincent L. Bogart, Special Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director